

438-13/JJW  
Freehill, Hogan & Mahar, LLP  
*Attorneys for Defendant*  
*MAERSK LINE LIMITED*  
549 Summit Avenue  
Jersey City, New Jersey 07306-2701  
Telephone: (973) 623-5514  
Facsimile: (973) 623-3813  
John J. Walsh, Esq.

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

-----X  
JAMES L. JOYCE, and others similarly situated, Civil No.: 2:13-cv-05566-ES-JAD

Plaintiff,

**ANSWER**

-against-

MAERSK LINE LTD.,

Defendant.

-----X

Defendant, Maersk Line Limited, by its attorneys, FREEHILL, HOGAN & MAHAR,  
as and for an Answer to the Complaint, alleges upon information and belief, as follows:

1. Answering Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint.
2. Answering Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint.
3. Answering Defendant admits that Plaintiff James L. Joyce complained of stomach pain aboard the M/V MAERSK OHIO, was treated for kidney stones and declared not fit for duty as a result of which he was repatriated to the United States and paid unearned

wages in accordance with the application Collective Bargaining Agreement and all amounts due him under applicable law, but except as so admitted, denies knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 3 of the Complaint.

4. Answering Defendant denies the allegations contained in paragraph 4 of the Complaint.

5. Answering Defendant denies the allegations contained in paragraph 5 of the Complaint.

6. Answering Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint.

7. Answering Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint.

8. Answering Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint.

9. Answering Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint.

10. Answering Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 10 of the Complaint.

11. Answering Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint.

**FIRST AFFIRMATIVE DEFENSE**

12. The Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

13. The Plaintiff has failed to make proper service of process on Defendant, Maersk Line Limited.

**THIRD AFFIRMATIVE DEFENSE**

14. The Standard Freightship Agreement, which is a Collective Bargaining Agreement with the union of which Plaintiff James Joyce is a member, provides that unearned wages, as referred to in the Collective Bargaining Agreement, shall be defined as base wages. As a result, Plaintiff James Joyce has no claim for relief for overtime wages as part of unearned wages.

**FOURTH AFFIRMATIVE DEFENSE**

15. The Shipowner's Liability Convention provisions requiring payment of unearned wages to seafarers with dependents until declaration of permanency are inapplicable, as not implemented by the United States Congress.

**FIFTH AFFIRMATIVE DEFENSE**

16. There are no "national laws or regulations" prescribing payments of wages to an injured/ill seaman with dependents until permanent disability is declared and therefore the Shipowners' Liability Convention does not require same to be paid.

**SIXTH AFFIRMATIVE DEFENSE**

17. Neither Plaintiff nor the putative members of Plaintiff's Class can maintain a Class Action within the meaning of Fed.R.Civ.P. 23.

**SEVENTH AFFIRMATIVE DEFENSE**

18. Plaintiff and/or members of his putative class are barred by the applicable statute of limitations.

**EIGHTH AFFIRMATIVE DEFENSE**

19. Plaintiff and/or members of his putative class are estopped from recovering any overtime as part of unearned wages.

**NINTH AFFIRMATIVE DEFENSE**

20. Plaintiff and/or members of his putative class are barred from recovering overtime as part of unearned wages as a result of release, accord or satisfaction.

**TENTH AFFIRMATIVE DEFENSE**

21. Plaintiff and/or members of his putative class are barred from recovering unearned wages due to fraudulent non-disclosure of a pre-existing medical condition.

**ELEVENTH AFFIRMATIVE DEFENSE**

22. Plaintiff and/or members of his putative class do not have standing to bring a Class Action against Maersk Line Limited.

**TWELFTH AFFIRMATIVE DEFENSE**

23. Plaintiff and/or members of his putative class failed to mitigate their damages.

**THIRTEENTH AFFIRMATIVE DEFENSE**

24. Plaintiff and/or members of his putative class are barred by laches in bringing this lawsuit.

**FOURTEENTH AFFIRMATIVE DEFENSE**

25. This action should be stayed pending the exhaustion of grievance procedures and arbitration pursuant to the Standard Freightship Agreement which is a Collective Bargaining Agreement binding Plaintiff.

**WHEREFORE**, Defendant, Maersk Line Limited, demands judgment in its favor dismissing this action and prohibiting the maintenance of a Class Action in this matter and for such other relief as this Court may deem just and proper.

Dated: October 10, 2013

FREEHILL, HOGAN & MAHAR  
Attorneys for Defendant  
Maersk Line Limited

BY: 

John J. Walsh  
549 Summit Avenue  
Jersey City, New Jersey 07306-2701  
Telephone: (973) 623-5514  
Facsimile: (973) 623-3813

TO: O'BRYAN, BAUN & KARAMANIAN  
Attorneys for Plaintiff  
401 S. Old Woodward – Suite 450  
Birmingham, MI 48009  
Attention: Dennis M. O'Bryan, Esq.

LAW OFFICE OF PATRICK FLANIGAN  
P. O. Box 42  
Swarthmore, PA 19801-0042  
Attention: Patrick Flanigan, Esq.

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

-----X  
JAMES L. JOYCE, and others similarly situated,

Civil No.: 2:13-cv-05566-ES-JAD

Plaintiff,

**CERTIFICATE OF SERVICE**

-against-

MAERSK LINE LTD.,


Defendant.  
-----X

I hereby certify that the within *Answer* was served upon counsel for Plaintiff:

O' BRYAN, BAUN & KARAMANIAN  
401 S. Old Woodward – Suite 450  
Birmingham, MI 48009  
Attention: Dennis M. O'Bryan, Esq.

LAW OFFICE OF PATRICK FLANIGAN  
P. O. Box 42  
Swarthmore, PA 19801-0042  
Attention: Patrick Flanigan, Esq.

by ECF filing with the U.S. District Court, District of New Jersey and by first class mail by delivering it to the U.S. Post Office in an envelope marked with the addresses listed above.

  
\_\_\_\_\_  
John J. Walsh

October 10, 2013